

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORDER
07-CR-19-A

BYRON COBB,

Defendant.

The United States has filed a Motion for Reduction of Sentence of the defendant, Byron Cobb, pursuant to Federal Rule of Criminal Procedure 35(b)(2)(B)-(C). For the reasons set forth below, the motion is granted.

Defendant was initially sentenced by the Court on June 11, 2008, primarily to a term of imprisonment of 57 months, with three years of supervised release, with certain conditions, for conspiracy to possess cocaine in violation of 21 U.S.C. § 846. Defendant was released from imprisonment to supervised release on October 19, 2010.

Defendant Cobb violated conditions of his term of supervised release on July 13, 2012. On July 15, 2013, defendant admitted allegations in a Petition for Offender under Supervision that charged the violations. Defendant is presently serving a 24 months sentence of imprisonment the Court imposed for those violations on August 14, 2013. Defendant is scheduled for release upon completion of the 24-months sentence on approximately February 17, 2015.

On November 13, 2014, the United States filed the motion pursuant to Rule 35(b)(2)(B)-(C) requesting that the Court reduce defendant Cobb's remaining sentence of imprisonment to reflect his substantial assistance in the investigation and prosecution of other persons who have committed offenses. The United States has also filed under seal an affidavit in support of the Rule 35 motion detailing the substantial assistance provided by defendant.

The United States requests that the Court grant defendant Cobb a reasonable reduction of defendant's sentence to reflect his substantial assistance. Defendant has requested that the Court reduce his sentence to time served.

Neither party has provided the Court with statutory or case law authority confirming that Rule 35(b) applies in the context of a supervised release sentence to authorize a sentence reduction. The Court nevertheless finds it has statutory authority under Rule 35 and 18 U.S.C. §§ 3553 and 3583 to reduce defendant's supervised release sentence of imprisonment in return for substantial assistance that occurred after a judgment revoking supervised release.

Accordingly, pursuant to Federal Rule of Criminal Procedure 35 and the Sentencing Reform Act of 1984, 18 U.S.C. § 3551 *et seq.*, it is the judgment of the Court that the defendant, Byron Cobb, is hereby resentenced to a sentence of time served. The Court considered defendant Cobb's prior presentence substantial assistance in evaluating whether to grant the post-judgment sentence-

reduction motion. The Court also considered that defendant violated conditions of supervised release after he was originally sentenced. Having concluded that a time-served sentence is necessary to reflect fairly defendant's substantial assistance described in the sealed affidavit filed by the United States, the Court grants the Motion for Reduction of Sentence, Dkt. No. 450, and resentences defendant to a term of imprisonment of time served.

SO ORDERED.

Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: December 16, 2014